

§ 1.982

§ 1.982 Salary offsets of debts involving benefits under the laws administered by VA.

(a) VA will not collect a debt involving benefits under the laws administered by VA by salary offset unless the Secretary or designee provides the employee with written notice.

(b) If the employee has not previously appealed the amount or existence of the debt under §§19.1 through 19.200 of this title and time for pursuing such an appeal has not expired (§19.129), the Secretary or designee will provide the employee with written notice of the debt. The written notice will state that the employee may appeal the amount and existence of the debt in accordance with the procedures set forth in §§19.1 through 19.200 of this title and will contain the determination and information required by §1.983(b)(1)–(5), (7), (9), (10), and (12)–(14). The notice will also state that the employee may request a hearing on the offset schedule under the procedures set forth in §1.984 and such a request will stay the commencement of salary offset.

(c) If the employee previously appealed the amount or existence of the debt and the Board of Veterans Appeals decided the appeal on the merits or if the employee failed to pursue an appeal within the time provided by regulations, the Secretary or designee shall provide the employee with written notice prior to collecting the debt by salary offset. The notice will state:

(1) The determinations and information required by §1.983(b)(1)–(5), (7), and (12)–(14);

(2) That the employee's appeal of the existence or amount of the debt was determined on the merits or that the employee failed to pursue an appeal within the time provided, and VA's decision is final except as otherwise provided in agency regulations;

(3) That the employee may request a waiver of the debt pursuant to §1.911a(c)(2) subject to the time limits of 38 U.S.C. 5302;

(4) That the employee may request an oral or paper hearing on the offset schedule and receive a decision within 60 days of such request under the procedures and time limit set forth in

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§1.984 and that such a request will stay the commencement of salary offset.

(d) If the employee has appealed the existence or amount of the debt and the Board of Veterans Appeals has not decided the appeal on the merits, collection of the debt by salary offset will be suspended until the appeal is decided or the employee ceases to pursue the appeal.

(Authority: 5 U.S.C. 5514)

§ 1.983 Notice requirements before salary offsets of debts not involving benefits under the laws administered by VA.

(a) For a debt not involving benefits under the laws administered by VA, the Secretary or designee will review the records relating to the debt to assure that it is owed prior to providing the employee with a notice of the debt.

(b) Except as provided in §1.980(e), salary offset of debts not involving benefits under the laws administered by VA will not be made unless the Secretary or designee first provides the employee with a minimum of 30 calendar days written notice. This notice will state:

(1) The Secretary or designee's determination that a debt is owed;

(2) The amount of the debt owed and the facts giving rise to the debt;

(3) The Secretary or designee's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest and associated costs are paid in full;

(4) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(5) An explanation of VA's requirements concerning interest, administrative costs, and penalties;

(6) The employee's right to inspect and copy VA records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;

(7) The employee's right to enter into a written agreement with the Secretary or designee for a repayment schedule differing from that proposed by the Secretary or designee, so long as the terms of the repayment schedule

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proposed by the employee are agreeable to the Secretary or designee;

(8) The employee's right to request an oral or paper hearing, conducted by an administrative law judge or a hearing official of VA or another agency, on the Secretary or designee's determination of the existence of the debt, the amount of the debt, or the percentage of disposable pay to be deducted each pay period, so long as a request is filed by the employee as prescribed by the Secretary;

(9) The method and time period for requesting a hearing;

(10) That the timely filing of a request for a hearing (oral or paper) will stay the commencement of salary offset;

(11) That a final decision after the hearing will be issued at the earliest practical date, but no later than 60 calendar days after the filing of the request for the hearing, unless the employee requests and the hearing officer grants a delay in the proceedings;

(12) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

- (i) Disciplinary procedures appropriate under 5 U.S.C. ch. 75, 5 CFR part 752, or any other applicable statutes or regulations;

- (ii) Penalties under the False Claims Act, 31 U.S.C. 3729-3731, or any other applicable statutory authority; or

- (iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority.

(13) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(14) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(Authority: 5 U.S.C. 5514)

§ 1.984 Request for a hearing.

(a) Except as provided in paragraph (b) of this section and in § 1.982, an employee wishing a hearing on the existence or amount of the debt or on the proposed offset schedule must send

such a request to the office which sent the notice of the debt. The employee must also specify whether an oral or paper hearing is requested. If an oral hearing is requested, the request should explain why the matter cannot be resolved by review of the documentary evidence. The request must be received by the office which sent the notice of the debt not later than 20 calendar days from the date of the notice.

(b) If the employee files a request for a hearing after the expiration of the 20 day period provided for in paragraph (a) of this section, VA may accept the request if the employee shows that the delay was because of circumstances beyond his or her control or because of failure to receive the written notice of the filing deadline (unless the employee has actual notice of the filing deadline).

(Authority: 5 U.S.C. 5514)

§ 1.985 Form, notice of, and conduct of hearing.

(a) After an employee requests a hearing, the hearing official or administrative law judge shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice shall set forth the date, time, and location for the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit his or her position and arguments in writing to the hearing official or administrative law judge by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit this information.

(b) An employee who requests an oral hearing shall be provided an oral hearing if the hearing official or administrative law judge determines that the matter cannot be resolved by review of documentary evidence, for example, when an issue of credibility or veracity is involved. If a determination is made to provide an oral hearing, the hearing official or administrative law judge may offer the employee the opportunity for a hearing by telephone conference call. If this offer is rejected or if the hearing official or administrative law judge declines to offer a telephone conference call hearing, the employee